



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 31125065

Date: MAY 10, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a data center/network engineer in the pharmaceutical industry, requests classification under the employment-based, first-preference (EB-1) immigrant visa category as a noncitizen with “extraordinary ability.” *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). Petitioners in this category must demonstrate “sustained national or international acclaim” and extensively document recognition of their achievements in their fields. *Id.*

The Director of the Texas Service Center denied the petition. The Director concluded that the Petitioner met two of ten initial evidentiary criteria – one less than required for a final merits determination. On appeal, the Petitioner contends that, in finding insufficient evidence of his commandment of a high salary and original contributions in his field, the Director misapplied law to facts.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo’s, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that the Petitioner met a third requisite evidentiary requirement by submitting evidence of his commandment of a high salary in his field. We will therefore withdraw the Director’s contrary decision and remand the matter for a final merits determination and entry of a new decision consistent with the following analysis.<sup>1</sup>

## I. LAW

To qualify as a noncitizen with extraordinary ability, a petitioner must demonstrate that:

- They have “extraordinary ability in the sciences, arts, education, business, or athletics;”
- They seek to continue work in their field of expertise in the United States; and
- Their work would substantially benefit the country.

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<sup>1</sup> After the appeal’s filing, the Petitioner submitted additional materials regarding this matter. U.S. Citizenship and Immigration Services (USCIS) assigned a separate receipt number  to the second filing. We will consider the second filing in a separate decision.

Section 203(b)(1)(A)(i)-(iii) of the Act.

The term “extraordinary ability” means a level of expertise commensurate with “one of that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). Evidence of extraordinary ability must demonstrate a noncitizen’s receipt of either “a major, international recognized award” or satisfaction of at least three of ten lesser evidentiary standards. 8 C.F.R. § 204.5(h)(3)(i-x).<sup>2</sup>

If a petitioner meets either of the evidentiary requirements above, USCIS must make a final merits determination as to whether the record, as a whole, establishes their sustained national or international acclaim and recognized achievements placing them among the small percentage at their field’s very top. *See Kazarian v. USCIS*, 596 F.3d 1115, 1119-20 (9th Cir. 2010) (requiring a two-part analysis of extraordinary ability); *see generally* 6 *USCIS Policy Manual* F.(2)(B), [www.uscis.gov/policy-manual](http://www.uscis.gov/policy-manual).

## II. ANALYSIS

The record shows that the Petitioner, an Indian native and citizen, earned a bachelor of technology degree in computer science and engineering in his home country. He came to the United States and earned a master of science degree in computer science and an executive master of science degree in information systems security. He has worked in the United States as a data center/network engineer for more than six years, developing expertise in network security in the pharmaceutical industry.

The Petitioner states that he wants to continue working as a data center/network engineer in the United States. Also, he states that, through research, he plans to integrate artificial intelligence (AI) into the fields of cybersecurity and the Internet of Things. He served as lead author on a paper proposing to use AI in combination with watermarking to enhance and monitor security of medical data passing through networks.

The Petitioner does not claim, nor does the record indicate, his receipt of a major, international award. He must therefore demonstrate his satisfaction of at least three of 10 initial evidentiary criteria. *See* 8 C.F.R. § 204.5(h)(3)(i-x)

The Director found that the Petitioner met two initial evidentiary criteria: authorship of scholarly articles in his field; and performance in a critical role for an organization with a distinguished reputation. *See* 8 C.F.R. § 204.5(h)(3)(vi), (vii). The Petitioner contends that he also submitted proof of his original contributions of major significance and commandment of a high salary in his field. *See* 8 C.F.R. § 204.5(h)(3)(v), (ix).

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<sup>2</sup> If the standards do not readily apply to a petitioner’s occupation, the noncitizen may submit comparable evidence to establish eligibility. 8 C.F.R. § 204.5(h)(4).

#### A. Commandment of a High Salary

This criterion requires “[e]vidence that the [noncitizen] has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.” 8 C.F.R. § 204.5(h)(3)(ix).

The Petitioner submitted copies of payroll documents showing that, from January 2023 to September 2023, his annual salary rate rose from \$91,140 to \$126,880. He also submitted copies of two 2023 letters offering him jobs as a data center/network engineer with annual salaries of \$148,500 and \$150,904.

A credible job offer showing prospective wages may establish a petitioner’s ability to command a high salary in their field. 6 *USCIS Policy Manual* F.(2)(B)(1). The record indicates no reason to doubt the credibility of the Petitioner’s job offers. He has therefore demonstrated an ability to command an annual salary of \$150,904 in his field.

Evidence as to whether a petitioner’s salary is high relative to others in their field may include compensation surveys, including materials from the U.S. Department of Labor (DOL). 6 *USCIS Policy Manual* F.(2)(B)(1). The Petitioner’s evidence included information from the DOL-sponsored Occupational Information Network (O\*NET), an online database. See O\*NET Res. Ctr., “About O\*NET,” [www.onetcenter.org/overview.html](http://www.onetcenter.org/overview.html). The O\*NET information indicates that, as of 2022, the top 10% of “network and computer systems administrators” in the Petitioner’s metropolitan work area annually earned at least \$139,230. The information also shows that the top 10% of these workers in that state and the United States annually earned at least \$136,850 and \$140,430, respectively. Thus, the O\*NET evidence shows that the Petitioner commanded an annual salary within the top 10% of network and computer systems administrators in his metropolitan work area, state, and the United States.

The Director, however, found the evidence insufficient to show the Petitioner’s commandment of a high salary relative to others in his field. The Director stated:

The regulation requires the [Petitioner] to offer evidence showing that he has commanded a high salary or significantly high remuneration relative to others in the field, rather than being in the “top 10% of earners,” “90th percentile,” or average salary for his experience. As such, the beneficiary has not shown that his annual salary constitute[s] “a high salary” or “other significantly high remuneration for services” as compared to other Data Center and Network Engineers.

The Director appears to fault the Petitioner for comparing his compensation to that of “network and computer systems administrators,” rather than more specifically to that of data center/network engineers. USCIS guidance states that compensation surveys should be “geographical *or* position-appropriate.” 6 *USCIS Policy Manual* 6(F)(2)(B)(1) (emphasis added). The Petitioner’s O\*NET evidence satisfies the guidance. The O\*NET information is geographically appropriate, as it specifically covers the Petitioner’s metropolitan work area. Also, the O\*NET information indicates that his duties as a data center/network engineer fall within those covered under “network and computer systems administrators.” Further, the Petitioner submitted articles indicating that network and computer systems administrators in high-tech fields earn more than those, like the Petitioner, in

the pharmaceutical industry and that his metropolitan work area has attracted many high-tech businesses. Thus, the O\*NET compensation information for network and computer systems administrators in his metropolitan work area likely exceeds the compensation of data center/network engineers in the pharmaceutical industry in his area. The Petitioner has therefore sufficiently demonstrated his commandment of a high salary relative to others in his field.

#### B. Original Contributions of Major Significance

The Petitioner contends that he satisfied another criterion by submitting evidence of his original contributions of major significance in his field. *See* 8 C.F.R. § 204.5(h)(3)(v). But he has already earned a final merits determination by meeting a requisite third evidentiary requirement. Thus, we need not reach his appellate argument regarding evidence of his purported original contributions to his field. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make “purely advisory findings” on issues unnecessary to their decisions); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant was otherwise ineligible).

#### C. Final Merits Determination

Because the Director found that the Petitioner met less than three evidentiary criteria, the Director did not conduct a final merits determination. Rather than make this determination in the first instance, we will remand the matter.

On remand, the Director should conduct a final merits determination.

To establish eligibility, the [P]etitioner must demonstrate that [he] has sustained national or international acclaim and that his achievements have been recognized in [his] field of expertise, indicating that [he] is one of that small percentage who has risen to the very top of the field of endeavor. The [Director] should consider the petition in its entirety to determine eligibility according to the standard.

6 *USCIS Policy Manual* F.(2)(B)(2).

The Director should consider any potentially relative evidence of record, even if it does not fit one of the initial evidentiary requirements. *Id.* The petition’s approval or denial depends on the evidence’s type and quality, rather than on assumptions about the inability to meet different criteria. *Id.*

### III. CONCLUSION

Contrary to the Director’s decision, the Petitioner submitted evidence of his commandment of a high salary in his field. As he has met at least three of the ten initial evidentiary criteria, USCIS must conduct a final merits determination on his petition.

**ORDER:** The Director's decision is withdrawn. The matter is remanded for entry of a new decision consistent with the foregoing analysis.